Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 11. APRIL, 1905. No. 11.

CASE AND COMMENT

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

NEW YORK, 81 Nassau St. CHICAGO, 225 Dearborn St.

Entered at post office at Rochester, N. Y. as second-class mail matter.

The Gaynor-Greene Case.

The "King's order," based on the decision of the judicial committee of the Privy Council, by which the decision of Mr. Justice Caron, of Quebec, in favor of the fugitives Gaynor and Greene in their extradition proceedings is reversed, is described by a Canadian journal as a "notice to all concerned that in the highest court of the Empire absolute justice will be maintained." The international scandal of fugitives from justice finding asylum in Canada, where they can live luxuriously on the fruits of crime, in defiance of the laws of the United States and of the treaty of extradition, will be lessened, if not abolished, by this decision. The Province of Quebec had come to be regarded as a haven of refuge for criminals who had carried off large spoils which they could use in fighting against extradition. In this instance, after Mr. Justice Andrews, of Quebec, on writ of habeas corpus, had remanded the prisoners, what the opinion of the Privy Council calls a "somewhat extraordinary intervention" was made by Mr. Justice Caron, the same judge, as it appears, whose decision in the celebrated Eno Case had been a barrier against extradition. Their Lordships speak of Mr. Justice Caron's "singular misapprehension" of the language of Mr. Justice Andrews, whereby he gets rid of the adjudication already made by the latter in the case, and they say that he confused the judgment rendered with the reasons which Mr. Justice Andrews gave in rendering it. And their Lordships say that, while it is common enough to speak of a judgment in referring to the reasons by which it is supported, it is "somewhat singular" to find a learned judge himself confusing the two things. The language of their Lordships' opinion clearly indicates that they have scant respect for the action of Mr. Justice Caron in the case. The effect of the decision we may well hope will be to destroy that obstruction to extradition of rich criminals from this country which had made the Province of Quebec in some sense a penal colony, to which criminals from this country exiled themselves. Of course, the above decision leaves the Gaynor-Greene extradition proceeding open for determination on the merits. This will doubtless be determined before these pages are in the hands of the reader.

Alimony as Affected by Discharge in Bankruptcy.

The decision in Wetmore *v.* Markoe by the United States Supreme Court—Advance Sheets U. S. 1904, 172, 25 Sup. Ct. Rep. 172—holds that a discharge in bankruptcy does

not bar the collection of arrears of alimony and allowance for the support of minor children under a decree in an action for divorce, although the decree is beyond the power of the court to alter or amend, because no such power is reserved therein. It holds that such claim for alimony is not a debt within the meaning of the statute, although it is established by final decree. The court said that, if a power had been reserved in the decree to alter or amend it with respect to alimony, the case would have been within the decision in Audubon *v.* Shufeldt, 181 U. S. 577, 45 L. ed. 1010, 21 Sup. Ct. Rep. 735. But this decision goes farther, and holds that such decree for alimony is not a debt, though no power to alter or amend it remains. In 6 CASE AND COMMENT, page 52, this question was discussed in the light of several decisions of referees in bankruptcy and of the lower Federal courts. Those authorities were conflicting, and the article pointed out that the American cases which sustain contempt proceedings to enforce payment of alimony proceed on the theory that the obligation to pay alimony is not a mere debt, else such an enforcement would violate the constitutional provisions against imprisonment for debt. The decisions of the highest Federal court have now finally established the exemption of all obligations to pay alimony from discharge in bankruptcy, even after they have been fixed by unalterable decree in a divorce suit.

Vaccination Law Held Constitutional.

The Massachusetts statute providing for an enforced vaccination of all the inhabitants of a city or town when the board of health deems it necessary for the public health or safety, with an exception of children certified by a physician to be unfit subjects for vaccination, is upheld by the Supreme Court of the United States in Jacobson *v.* Massachusetts, decided February 20, 1905, Advance Sheets U. S. p. 358. Several points are decided in this case, but the fundamental one is that the constitutional guaranty of liberty is not infringed by enforcing such a statute against adults,—at least as against those who do not show with reasonable certainty that they are not at the time fit subjects for vaccination, or that vaccination, by reason of their condition at the time, would seriously impair health, or probably cause death. No exemption of this class is expressly made by the statute, but the court is inclined, until otherwise informed by the highest court of Massachusetts, to hold that such an exemption is implied.

It is undeniably a case of great hardship, suggestive at least of oppression, to compel persons who sincerely believe that vaccination is not only useless, but dangerous to health and life, to submit to vaccination. It is no wonder that they feel a sense of great outrage by such laws, whether their belief is right or wrong. After they have reached it intelligently and conscientiously, the enforcement of such a law against them seems to them not to be a protection in any sense, but the forcing upon them of a loathsome, dangerous, and possibly fatal, disease resulting from vaccination. The majority of the people, however, have a different belief, and think vaccination is necessary to the safety of the public. The question is: Can this majority force upon the unwilling minority such an alleged protection?

The sovereignty which inheres in governments concededly belongs in this country to the legislatures, limited only by our state and Federal Constitutions. A theory that has from time to time found more or less support in the courts, to the effect that statutes which contravene great fundamental principles of right might be held void by the courts, though they violated no constitutional provision, has little acceptance at the present day. The power of the legislature is limited by the Constitutions, but the prevalent doctrine now is that they are limited by constitutional provisions only. It is by that test that such a statute as this must be judged.

The particular constitutional provision which in this Massachusetts case was asserted as a barrier against the general power of the legislature to enact any law of this kind was that which provides that no state shall make a law abridging the privileges or immunities of citizens of the United States, or deprive any person of life, liberty, or property without due process of law. The guaranty of privileges and immunities to citizens of the United States has no effect on the question. It is clearly established by the line of decisions on this subject, such as Duncan *v.* Missouri, 152 U. S. 377, 38 L. ed. 485, 14 Sup. Ct. Rep. 570, that the privi-

leges and immunities protected by the 14th Amendment are those which arise out of the nature and essential character of the Federal government as distinguished from the privileges and immunities of the citizens of the states. That amendment does not restrain a state from passing laws abridging the privileges and immunities of its own citizens, unless it abridges their privileges and immunities as Federal citizens. The right of a citizen to immunity from compulsory vaccination, if he has any such right, is obviously not one which arises out of the nature and character of the national government or its Constitution, laws, and treaties. The guaranty of life, liberty, or property against deprivation without due process of law is, therefore, the only one on which any serious question can be raised in this matter. But it has long been settled that the 14th Amendment is not designed to interfere with the police power of the state for the protection of health as well as peace, morals, and good order. Protection against contagious diseases by quarantine is one of the forms in which this power has been exercised. Morgan's L. & T. R. & S. S. Co. v. Louisiana Bd. of Health, 118 U. S. 455, 30 L. ed. 237, 6 Sup. Ct. Rep. 1114. Therefore, the question respecting compulsory vaccination seems to resolve itself into the inquiry whether it is or is not a proper exercise of the police power. That the protection of health is a proper subject of the police power is unquestioned. It seems difficult to escape, therefore, from the proposition that it is for the legislature to determine what measures are necessary and proper for this purpose. The courts have power to restrain the legislature from infringing the constitutional guaranties, but not to revise the judgment or discretion of the legislature in the exercise of a power which belongs to it. With all the hardship that may result, therefore, to those who do not believe in vaccination, it is difficult to find any escape from the conclusion that the law, whether wise or unwise, is within the scope of legislative power.

The intimation by the Supreme Court that the exercise of the police power by compulsory vaccination might be exerted in such circumstances, or by regulations so arbitrary and oppressive in particular cases, as to justify the interference of the courts to prevent wrong and oppression is not easy to reconcile with the reasoning which sustains the statute in its general operation. If the legislature can determine that compulsory vaccination is necessary in most cases, has it not as good a right to decide that it is necessary in all cases? If the courts will not receive evidence to show that vaccination is not only useless, but very dangerous, in ordinary cases, how can they receive evidence to show that it is dangerous in a particular case? Each is a question of fact, though it may possibly be said that the legislature is competent to decide the former, but not the latter, because it can have, and presumably does have, before it evidence as to the effects of vaccination generally, but cannot be supposed to have had before it any evidence as to what would be the effect on a particular individual who may be in an exceptional physical condition. It is probably true that the courts would interfere in cases where they deemed the exercise of the police power exceptionally arbitrary and oppressive, but it does not seem quite certain that such cases would differ from ordinary cases, except in degree, or be logically subject to any different rule. The decisions of the courts on this matter of the police power and its relation to the judicial department are too inconsistent for any possible reconciliation, though they generally assume to follow the rule that the exercise of the police power over any subject which is clearly within its range is for the legislature, without judicial interference.

Railroad Rebates and Favoritism.

To say without qualification either that railroad rebates are illegal or that they are legal seems to be impossible under the decisions of the courts. Even at common law the majority of the modern cases, at least, as appears from a *note* in 18 L. R. A. 105, hold that at common law a carrier cannot unjustly discriminate between persons in the same circumstances so as to ruin or injure the business of one person and build up that of his rival. On the other hand, it seems to be a fair implication from the majority of the decisions that, in the absence of statutory restriction, some favor may be shown by a common carrier to one customer over another, if this goes no farther than merely to favor the one without working injury to the other. It was distinctly held in

Cleveland, C. C. & I. R. Co. *v.* Closser, 126 Ind. 348, 9 L. R. A. 754, 3 Inters. Com. Rep. 387, 22 Am. St. Rep. 593, 26 N. E. 159, that a rebate given by a carrier to a shipper is not necessarily illegal, since it might be given in cases without making any unjust discrimination or unduly favoring one at the expense of another. Such is also the effect of the decision in Laurel Cotton Mills *v.* Gulf & S. I. R. Co. (Miss.) 66 L. R. A. 453, 37 So. 134. In the latter case a rebate on the rates paid for manufactured articles of the amount previously paid on raw materials shipped to the mill was held not to constitute a violation of a statute forbidding rebates. On the other hand, it was held in Cook *v.* Chicago, R. I. & P. R. Co. 81 Iowa, 551, 9 L. R. A. 764, 3 Inters. Com. Rep. 383, 25 Am. St. Rep. 512, 46 N. W. 1080, that the allowance of a rebate to some customers and not to others for precisely similar services constitutes an unjust discrimination which is illegal at common law. The same decision was made in Fitzgerald *v.* Grand Trunk R. Co. 63 Vt. 169, 13 L. R. A. 70, 3 Inters. Com. Rep. 633, 22 Atl. 76. Such rebates are, of course, illegal under the Interstate Commerce Law, and this was held in Bullard *v.* Northern P. R. Co. 10 Mont. 168, 11 L. R. A. 246, 3 Inters. Com. Rep. 536, 25 Pac. 120, to apply to contracts for such rebates that had been made before that law was passed. Though the right of the public to equality in the service of common carriers is clear, the power of the public to get such equality seems in some states to be hopelessly lost. In one state, at least, a man who should seriously undertake to enforce his right to have equal service and equal rates on the railroads with those given to the trusts would be looked upon as of doubtful sanity. In that state these trusts are said to control the entire carrying capacity of the railroads for certain products, and thereby to ruin the business of every individual competitor. It seems, also, to be thought entirely hopeless to appeal either to the legislature or the courts for relief against such oppressive monopoly.

The hope of relief by Congress from the power of great corporations and trusts that crush out competition by the aid of secret and illegal rebates and other favoritism in railroad service has been much stimulated in the past few months. It may not be easy to frame a law that will be wise and just. It may be more difficult still to enforce the law when enacted. Some railroad men and other men quite freely declare that the enforcement of a law against rebates is impossible. This is a dangerous contention. Once let the people believe it true and the remedies they will speedily adopt, whether wise or not, will be drastic and far reaching. There is already a widespread belief that the power of these great aggregations of capital is too great for the safety of the public. Nothing more would be needed to make this belief universal and ripen it into a stern conviction than to show that the government is powerless to enforce against them a just law for the protection of its citizens. If they are amenable to control by such laws, the time is come for the enactment and enforcement thereof.

Simple justice is the demand. A state which is powerless to provide it is a failure. If any creature of the state has become more powerful than the state itself,—if it can work oppression and injustice with impunity,—it is time for the people to understand it clearly. When they do, they can be trusted to deal with the problem. It is not chiefly a question of exorbitant rates, but of fairness and equality in rates. Even when railroad rates are too high, if there is no unjust discrimination, the conditions of trade and commerce may be at least tolerable; but, when a giant monopoly enters any field, and gets such secret and unlawful preferences from the railroads that competition with it is impossible, a tyranny is established which no free country can tolerate.

Index to New Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 66, Parts 5 and 6.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Appeal.

Practice and procedure governing the transfer of causes to the Federal Supreme Court on writ of error or appeal:—(I.) Introduction; (II.) the writ of error: (a) issuance and allowance: (1) in general; (2) where the writ runs to a state court; (b) to what court directed; (c) form: (1) generally; (2) description of parties; (d)

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Actions.

A widow residing in one state, of a man who also resided there but who was negligently killed in another state, is held, in Robertson v. Chicago, St. P. M. & O. R. Co. (Wis.) 66 L. R. A. 919, to be entitled to the benefit of a statute of the latter state, giving a right of action against one guilty of the negligence, and requiring the amount recovered to be paid over to the widow of the decedent.

One who holds the full legal title to a promissory note by assignment is held, in Manley v. Park (Kan.) 66 L. R. A. 967, to be entitled to maintain an action thereon against the maker, although he has no beneficial interest in the proceeds, and the assignment was made to enable him to realize on the claim in the interest of the original payee.

Appeal.

A writ of error issued in the Federal Supreme Court for the purpose of reviewing the decision of a state court is held, in Wedding v. Meyler (U. S.) 66 L. R. A. 833, to be properly directed to the inferior state court, where the judgment of the highest state court was ordered to be entered, and where the record remained.

Assignment.

As between successive assignments of a fund in the hands of a third person, the one which, being acquired without notice of

prior ones, is first brought to the knowledge of the depositary, is held, in *Re* Phillips (Pa.) 66 L. R. A. 760, to be entitled to priority.

Attorneys.

See PARTNERSHIP.

Banks.

See CORPORATIONS; PRINCIPAL AND SURETY.

Benevolent Societies.

The supreme lodge of a mutual benefit society which has authorized its agent, a local lodge, to initiate members into the order, is held, in Mitchell *v.* Leech (S. C.) 66 L. R. A. 723, to be liable for injuries inflicted upon a candidate by the use of a mechanical goat in the initiation ceremony, although it has not authorized the use of such contrivance.

Brokers.

A real-estate broker is held, in Cadigan *v.* Crabtree (Mass.) 66 L. R. A. 982, not to be entitled to a commission, where, after having produced a customer willing to negotiate for the lease which he was employed to effect, the principal in good faith decides not to lease, terminates the negotiation, and discharges the broker, although the principal subsequently again decides to lease and makes a contract with the customer produced by the broker.

Carriers.

A carrier of live stock is held, in Bosley *v.* Baltimore & O. R. Co. (W. Va.) 66 L. R. A. 871, not to be able to exempt itself from liability for loss caused by delay in transportation occasioned by the negligence or misfeasance of itself or its servants, by a contract with the shipper providing that, in case of any unusual detention of the live stock caused by the negligence of the carrier or its servants or connecting carriers, the shipper should accept as full compensation the amount actually expended by him in the purchase of food and water for the stock while so detained.

A railroad company is held, in Allen *v.* Northern P. R. Co. (Wash.) 66 L. R. A. 804, not to be bound to warn passengers who have left its cars while being ferried across a river of the danger of attempting to reenter them after the train has begun to move at a point where it is necessary suddenly to increase the speed to give momentum to ascend the incline to the land.

Case.

One not belonging to the proscribed class is held, in Davis *v.* Tacoma R. & P. Co. (Wash.) 66 L. R. A. 802, to have a right of action for the actual damages suffered in case he is ordered from the grounds when visiting a place of public resort and behaving in a proper manner, by the manager or his representative, in a way to subject him to humiliation or disgrace, although the act is done through mistake.

Constitutional Law.

The power of the legislature to limit the charges which the owner of an employment agency may make for his services is denied in *Ex parte* Dickey (Cal.) 66 L. R. A. 928.

A statute permitting the condemnation of private property for the purpose of establishing a private road or highway is held, in Clark *v.* Mitchell County Comrs. (Kan.) 66 L. R. A. 965, to be unconstitutional.

Contempt.

Criticism of the manner in which trials are conducted in court is held, in *Ex parte* Green (Tex. Crim. App.) 66 L. R. A. 727, not to be punishable as a contempt of the court, unless it refers to some particular case pending before the court.

Contracts.

See RELEASE.

Corporations.

Holders of stock in a corporation, the property of which has been sold, are held, in Hearst *v.* Putnam Min. Co. (Utah) 66 L. R. A. 784, to have no right to maintain a suit to enforce a trust in such property for

their own benefit on the theory that the directors of the company were guilty of fraud in disposing of it.

The decision of the Comptroller of the Currency that it is necessary to collect, and his requisition of, a certain percentage of the liability of the shareholders of a national bank in order to pay its debts, is held, in Deweese v. Smith (C. C. A. 8th C.) 66 L. R. A. 971, not to be a decision that a larger percentage will not be necessary; and he is held to have plenary power to make successive assessments until the full liability of the shareholder is exhausted.

Dower.

A purchaser who buys land subject to a wife's contingent dower right is held, in Bassell v. Caywood (W. Va.) 66 L. R. A. 880, to assume the risk thereof, and not to be entitled to have the same charged up to, or set off against, the purchase price.

Executors and Administrators.

See also NEW TRIAL.

The right of an ancillary administrator, who has been compelled to pay a debt against the estate after he has, in ignorance thereof, turned over the assets in his hands to the principal administrator, to proceed against one only of the distributees for reimbursement, is sustained, in McClung v. Sieg (W. Va.) 66 L. R. A. 884, where the distributees are all nonresidents, and she is the only one who has property within the state subject to the jurisdiction of the court.

Gaming.

One who receives orders for the purchase or sale of cotton futures, and telegraphs them for execution to another city in another state, to which the margins are sent, and from which the profits are transmitted for delivery to the customer, is held, in Scales v. State (Tex. Crim. App.) 66 L. R. A. 730, not to transact the business of buying or selling futures at the place where his office is located, so as to be subject to punishment under a statute forbidding the transaction of such business.

Highways.

The use of streets and sidewalks by an individual simply for his own convenience and accommodation is held, in O'Hanlin v. Carter Oil Co. (W. Va.) 66 L. R. A. 893, to be unauthorized and essentially a nuisance, and to make such individual liable for all damages sustained in consequence of the improper appropriation of the street or sidewalk to his own personal use.

The precipitation of one riding in a vehicle drawn by a horse into a stream crossing a highway at a place where a bridge is open and unguarded, after the horse has traveled 60 to 80 feet after being frightened, during which time the driver is struggling to master him, is held, in Ehleiter v. Milwaukee (Wis.) 66 L. R. A. 915, not to be within the exception to the rule that a municipal corporation is not liable for injuries caused by defects in the streets if the injured person was brought into contact with the defect by the running away of a horse, which permits a recovery in case the loss of control of the horse was only momentary.

A plank sidewalk is held, in Harden v. Jackson (Mich.) 66 L. R. A. 986, not to be so unsafe as to render a municipal corporation liable to one who falls upon it because his cane goes through it, although it is so old that the edges of the planks have become decayed, and adjacent to the cracks they will not withstand the pressure of the cane, where the defect is not such as to attract attention.

Husband and Wife.

See also DOWER.

Where one of the parties to a marriage contract fails to perform his agreement at the time fixed for the ceremony, no reasonable excuse existing for such failure, it is held, in Waneck v. Kratky (Neb.) 66 L. R. A. 798, that the other party may rescind the contract and maintain an action for damages.

Injunction.

The right to an injunction to restrain a manufacturer of pig iron from changing the manner of operating his furnaces is sustained in Sullivan v. Jones & L. Steel Co.

(Pa.) 66 L. R. A. 712, where the result of the change is to cast ore dust upon neighboring residential property in such quantities as to destroy homes and other property there situated.

Insurance.

A contract for present insurance is held, in Summers *v.* Mutual L. Ins. Co. (Wyo.) 66 L. R. A. 812, not to be made by an applicant who gives his note for the first premium in consideration that a policy shall be issued, where his examination is to be made in the future, and he expressly stipulates that the note shall not be negotiated until the policy has been delivered and accepted.

Judgment.

A judgment in favor of defendants in an action of trespass to try title to land which had been sold under a judgment foreclosing a tax lien, and to set aside the judgment, is held, in Moore *v.* Snowball (Tex.) 66 L. R. A. 745, not to be a bar to a subsequent suit to set aside the sheriff's sale for irregularities upon equitable terms, in which the title is conceded to be in the purchaser.

Master and Servant.

See also RELEASE.

The employment of an independent contractor to do blasting is held, in Louisville & N. R. Co. *v.* Tow (Ky.) 66 L. R. A. 941, not to relieve the employer from liability for injuries caused by negligence in doing the work, if he is himself controlling the work in whole or in part, and the character of the negligence is such as to render him responsible for it.

Municipal Corporations.

See also HIGHWAYS.

An ordinance imposing a mileage tax as a condition of granting a street railway company the privilege of using the streets is held, in Chicago General R. Co. *v.* Chicago (Ill.) 66 L. R. A. 959, to be within the authority conferred by a statute providing that the city may give the privilege upon such terms and conditions, not inconsistent with the statute, as the authorities shall deem for the best interests of the public.

Negligence.

One delivering gas naphtha to a consignee in a tank car provided by himself is held, in Standard Oil Co. *v.* Wakefield's Admr. (Va.) 66 L. R. A. 792, to be liable in case a servant of the consignee, whose duty it is to unload the car, is killed by an explosion due to the fact that the car is in such defective condition that it cannot be unloaded in the ordinary way with safety.

The seller of a sidesaddle to a husband is held, in Bragdon *v.* Perkins-Campbell Co. (C. C. A. 3d C.) 66 L. R. A. 924, to be under no duty to the wife, for whose use he knows it to have been purchased, which will render him liable to her for negligence in its defective construction.

New Trial.

Legatees of the distributee of an intestate, who were not given notice of a proceeding to establish a claim against the intestate estate, for the payment of which their legacies will be required, are held, in Winchell *v.* Sanger (Conn.) 66 L. R. A. 935, to be entitled to a new trial of an action brought to establish a claim against such estate, where the claim, as allowed, is nearly double the amount presented to the administrator within the time allowed for the presentation of claims, and the payment of a note which is alleged to have been given in satisfaction of the claim was not pleaded in the action, and, although given in evidence, was wholly withdrawn from consideration.

Nuisance.

See OFFICERS.

Officers.

The determination of health officers that private property is a nuisance, or a cause of sickness dangerous to health, is held, in Lowe *v.* Conroy (Wis.) 66 L. R. A. 907, to be no protection against liability for its destruction, if the property is in fact not a nuisance or source of danger.

Parent and Child.

The liability of a father for a tort of his minor child with which he was in no way connected, which he did not ratify, and from which he did not derive any benefit, is denied in Chastain v. Johns (Ga.) 66 L. R. A. 958.

Partnership.

The doctrine of *quantum meruit* is held, in Clifton v. Clark (Miss.) 66 L. R. A. 821, not to be applicable to limit the amount of recovery in favor of the estate of a deceased member of a firm of attorneys, to the value of services performed during the decedent's lifetime, where the compensation was to be a contingent fee, and the surviving partner conducts the litigation to a successful termination, and thereby earns the fee.

Party Wall.

A promise by an adjoining lot owner to the builder of a party wall to compensate him for the use thereof is held, in Cook v. Paul (Neb.) 66 L. R. A. 673, to be personal to the promisee, and not a covenant running with his land.

Principal and Surety.

If a bank clerk, during a series of years covered by different bonds guaranteeing a bank against "loss" through his acts, falsifies the accounts of a customer so as to give him a fictitious credit, it is held, in First Nat. Bank. v. National Surety Co. (C. C. A. 6th C.) 66 L. R. A. 777, that the court, in determining the liability of the surety on the last bond, will appropriate the deposits of the customer made during that time to the checks drawn during the same term; and if, when so applied, the drafts have not exceeded the deposits, it is held that no loss has resulted to the bank for which the last surety can be charged.

Release.

The mention of certain injuries known to have resulted from an accident in a release by an injured person of the right of action against the one responsible for the accident is held, in Quebe v. Gulf, C. & S. F. R. Co. (Tex.) 66 L. R. A. 734, not to preclude general language used in the release from having the effect of releasing liability for all injuries, even those not known at the time or specified in the release.

A release exacted by a railroad company as a condition of permitting an injured employee to return to work, without any undertaking on its part to continue the employment any longer than may be satisfactory to it, is held, in Missouri, K. & T. R. Co. v. Smith (Tex.) 66 L. R. A. 741, to be without consideration, and not binding on the employee.

Street Railways.

See also MUNICIPAL CORPORATIONS.

If the motorman in charge of an electric car going at a high rate of speed sees a runaway team approaching a crossing under such circumstances as must suggest to any mind that a collision is probable, and makes no effort to control or stop his car, it is held, in Wilson v. Chippewa Valley Electric R. Co. (Wis.) 66 L. R. A. 912, that he is guilty of that wanton and reckless disregard of human life which amounts in law to intentional wrong.

A street car company is held, in Duchemin v. Boston Elev. R. Co. (Mass.) 66 L. R. A. 980, not to owe to a person upon a street, where its car has stopped to receive him as a passenger, the same high degree of care with respect to defects in the car while he is approaching to enter it that it owes to passengers actually on board.

Taxes.

The right of the legislature to impose upon a man the duty of listing in his own name for taxation the property of his wife which is not settled on her for her separate use is sustained in Union School Dist. v. Bishop (Conn.) 66 L. R. A. 989.

Trial.

An instruction to a jury that evidence of contradictory statements made by a witness out of court is entitled to little weight is held, in Bradley v. Gorham (Conn.) 66 L. R. A. 934, to be erroneous.

Waters.

A railroad company which sinks a large and deep well on its own property to secure water for the use of its shops and engines is held, in Houston & T. C. R. Co. *v.* East (Tex.) 66 L. R. A. 738, not to be liable for injury thereby caused to the owners of neighboring land, although it pumps therefrom such large quantities of water that the subterranean water is drawn from the surrounding lands and the wells thereon are deprived of their water supply.

If, in granting land bordering on a small lake capable of private ownership, the lines are run through the lake, it is held, in Smoulter *v.* Boyd (Pa.) 66 L. R. A. 829, that no riparian right to the use of the whole lake is acquired by any grantee, and that barriers may be placed along the division lines which will exclude the owners of all other portions of the lake bed from the use for boating purposes of the water within them.

Persons in possession of tide land under a contract with the state for its purchase, although they have not fully complied with the terms of their contract so as to obtain a legal title to the premises, are held, in State *ex rel.* Trimble *v.* King County Superior Court (Wash.) 66 L. R. A. 897, to have an interest which is subject to be taken from them under a statute giving the right to acquire "lands, real estate, or premises" by right of eminent domain for railroad purposes.

New Books.

"Constance Trescot." A Novel. By S. Weir Mitchell. New York. The Century Company. 1 Vol. $1.50.

Dr. Mitchell's latest novel is unmistakably unusual. One powerful scene in it is the trial of a lawsuit, out of which grows the tragedy of the book. It has an intensity of interest. The psychological element in the book will be differently judged. It leaves the heroine a selfish and unlovely woman. This is not a pleasant ending, but it may be a natural one.

"Therapeutics, Materia Medica and the Practice of Medicine." By S. V. Clevenger. 1 Vol. $2.

"Registration of Trademarks." Under the new trademark act of the United States. By Arthur P. Greeley. Pamphlet. 50 cents.

"Instructions to Juries." With Forms. By Charles Hughes. 1 Vol. $5 net.

"Philadelphia Digest." Compiled by William F. Brown, Assisted by Ira J. Williams. $7.50.

"Shepard's Citations for Wisconsin Reports." $7.50.

"The Law of Divorce." (Pennsylvania.) By Harold M. Sturgeon. 1 Vol. $5 net.

"Interstate Commerce." By Frederick N. Judson. 1 Vol. $5.

Recent Articles in Law Journals and Reviews.

"Notice of Acceptance in Contracts of Guaranty."—2 Ohio Law Reporter, 497.

"Abolish the Court of Chancery."—37 Chicago Legal News, 243.

"Doctrine of Previous Jeopardy."—60 Central Law Journal, 184.

"The Psychology of Negligence."—41 Canada Law Journal, 233.

"Removal of Public Officers from Office for Cause, II."—3 Michigan Law Review, 341.

"Constitutional Limitations on Primary Election Legislation."—3 Michigan Law Review, 364.

"Jurisdiction in Actions between Foreigners."—18 Harvard Law Review, 325.

"Tide-Flowed Lands and Riparian Rights in the United States."—18 Harvard Law Review, 341.

"Waiver in Insurance Cases."—18 Harvard Law Review, 364.

"Citizenship of the United States as a Legal Status."—13 American Lawyer, 57.

"Genesis of the Federal Judiciary System."—13 American Lawyer, 64.

"Res Judicata between Codefendants."—3 Madras Legal Companion, 95.

"Public Regulation of Quasi-Public Corporations."—14 Yale Law Journal, 255.

"The Legal Status of the Philippines—As Fixed by the Recent Decision of the Supreme Court in the Jury Trial Cases."—14 Yale Law Journal, 266.

"Married Women's Property Law in Ontario."—25 Canadian Law Times, 105.

"The Philippines."—25 Law Register, 132.

"Tort Liability for Mental Disturbance and Nervous Shock."—5 Columbia Law Review, 179.

"Expansion of Constitutional Powers by Interpretation."—5 Columbia Law Review, 193.

"Notice of Acceptance in Contracts of Guaranty."—5 Columbia Law Review, 215.

"Wife Testifying against Husband's Paramour in Adultery Cases."—60 Central Law Journal, 164.

"The Limitations of the Power of a State under a Reserved Right to Amend or Repeal Charters or Incorporation (Continued)."—53 American Law Register, 73, 145.

"The Limitations of the Action of Assumpsit as Affecting the Right of Action of the Beneficiary (Continued)."—53 American Law Register, 112.

"The Law of Bank Checks—Practical Series."—22 Banking Law Journal, 79.

"Municipal Liability for Injuries Resulting from Defective and Inadequate Sewerage."—60 Central Law Journal, 224.

"Internal Arbitration and the Hague Court."—13 American Lawyer, 100.

"The Laws of Descent and Inheritance—Ancient and Modern."—13 American Lawyer, 102.

"The Constitutional Powers of the President."—13 American Lawyer, 106, 28 New Jersey Law Journal, 41.

"How Far are Labor Unions Liable for the Acts of Their Members?"—13 American Lawyer, 111.

"Mental Disturbances and the Consequences thereof as Elements of Damages."—60 Central Law Journal, 205.

The Humorous Side.

RISK OF GITTING SKIND.—A county clerk in Iowa got the following letter from a man in Oklahoma:

The County Cleark,

"Knoxville, Iowa,

Dear Sir,

your favor at hand, giving the amount of the judgment aginst mee on the books of the County, for whitch grate favor pleas acsept my humbel thanks,

I have this day made the nessiserey arangements to pay the judgment in full, with all the spead posable under the present existing condishens of the railways, and the government mail servis.

you spoke of something in conection with this matter that you woold holde until you heard from mee, but what it is I do not nc for I am not a lawyer, and do not understand the leagle abreaviations, and turms yoused in sutch matters, and cood not make out eney enteligent meaning, from the cut and dryed parts of words yoused in your letter,

but I feal confident that it is some proses of pileing costes on top of costs as the custum is of all law proceedings,

if I am right, I will bee eturneley grateful to you if you will continue your grip and holde the matter long anuf for —— to receve my letter and settel this matter in full, as hee will do at once, on the recept of my letter.

had I none eney thing of this judgment I wood have had it setteld long ago, but I respecfully decline to employ an atterney to look up my leagle rights in the matter, and bee bled by him for more money than it will take to pay the matter in full, and run a big risk of gitting skind for still grater amounts, of costs and other snide clames, I expect to return to Iowa in the summer and then will have this matter looked into to some extent and perhaps will then have the pleshur of meating you personaley, yours truley,

—— ——.

OUTLAWED MONEY.—The financial world will be greatly startled by a decision just rendered in Minnesota by a justice of the peace to the effect that a national bank bill is outlawed and cannot be of any value to anyone, and therefore cannot constitute a good tender for a debt, after six years from its date. The opinion of the learned justice states that the law is to the effect that a demand must be made within six years in order to preserve a cause of action on a demand note, that the bank note is a demand note, and in the absence of proof that payment thereof had ever been demanded of the bank the note is outlawed. Strange that no one thought of it before.